No. 85-1589

IN THE

Supreme Court of the United States

October Term, 1985

IOWA MUTUAL INSURANCE COMPANY,
a corporation,
Petitioner,

—vs.—

EDWARD M. LaPLANTE, VERLA LaPLANTE, ROBERT WELLMAN, JR., RAMONA WELLMAN, CRAIG WELLMAN, TERRY WELLMAN and WELLMAN RANCH COMPANY,
a dissolved Montana corporation,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JOINT APPENDIX

MAXON R. DAVIS
Cure, Borer & Davis
320 First Nat'l Bank Bldg.
Great Falls, Montana 59403
Telephone: (406) 761-5243
Counsel for Petitioner

JOE BOTTOMLY
Bottomly & Gabriel
#18 6th St. North
Great Falls, Montana 59401
Telephone (406) 727-4050
Counsel for Respondents

PETITION FOR CERTIORARI FILED MARCH 25, 1986
CERTIORARI GRANTED MAY 27, 1986

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IOWA MUTUAL INSURANCE COMPANY,
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

IOWA MUTUAL INSURANCE COMPANY,
a corporation,
Petitioner,
—vs.—
EDWARD M. LaPLANTE, VERLA LaPLANTE,
ROBERT WELLMAN, JR., RAMONA WELLMAN,
CRAIG WELLMAN, TERRY WELLMAN and
WELLMAN RANCH COMPANY, a dissolved
Montana corporation,
Defendants

COMPLAINT
No. CV-84-131-GF

PLAINTIFF COMPLAINS AND ALLEGES:

I.

That the plaintiff is an Iowa corporation whose principal place of business is in the State of Iowa.

II.

That all of the defendants are domiciled in the State of Montana and can be considered as citizens of the State of Montana for the purpose of diversity jurisdiction under 28 U.S.C. Sec. 1332.

III.

That this is an action for a declaratory judgment pursuant to 28 U.S.C. Sec. 2201 for the purpose of determining a question of actual controversy between the parties as hereinafter more fully appears.

IV.

That jurisdiction of this action is based upon 28 U.S.C. Sec. 1332 (a) there being diversity of citizenship between the parties and the amount in controversy exceeding $10,000, exclusive of interest and costs.

V.

That the plaintiff has issued various policies of insurance, including automobile liability and farmowner's - ranchowner's, to the defendant Wellman Ranch Co. under which policies of insurance the defendants Robert Wellman, Jr., Ramona Wellman, Craig Wellman and Terry Wellman may be entitled to indemnification and coverage as additional insureds.

VI.

That the defendants Edward M. LaPlante and Verla LaPlante have filed an action against this plaintiff as well as the defendants Robert Wellman, Jr., Ramona Wellman, Craig Wellman, Terry Wellman and Wellman Ranch Co., in the Blackfeet Tribal Court of the Blackfeet Indian Reservation, carrying cause No. 83-CA-180 seeking damages as the result of personal injuries allegedly sustained by the said Edward M. LaPlante; that Exhibit A attached hereto and by this reference made a part hereof is a copy of the Amended Complaint filed in the Blackfeet Tribal Court by the defendants Edward M. LaPlante and Verla LaPlante.

VII.

That neither the allegations of said Amended Complaint nor the facts underlying said Tribal Court proceeding, to the extent they may differ from the allegations of LaPlante's Amended Complaint, fall within the scope, terms or coverage of any insurance policy issued by the plaintiff.

VIII.

That the defendants Edward M. LaPlante and Verla LaPlante take the position that any injuries which they have suffered or sustained do fall within the scope, terms and coverage of plaintiff's insurance policies.

IX.

That the obligation of the plaintiff to indemnify Robert Wellman, Jr., Ramona Wellman, Craig Wellman, Terry Wellman and Wellman Ranch Company for any damages that may be awarded to Edward M. LaPlante and Verla LaPlante and to defend Robert Wellman, Jr., Ramona Wellman, Craig Wellman, Terry Wellman and Wellman Ranch Company from the claims of Edward M. LaPlante and Verla LaPlante is at issue in this proceeding such that they are necessary parties to this action.

WHEREFORE, plaintiff demands Judgment that this Court Adjudge that:

1. That any claims of Edward M. LaPlante and Verla LaPlante for damages arising out of an incident that occurred on or about May 3, 1982, as described in LaPlante's Amended Complaint in the Blackfeet Tribal Court of the Blackfeet Indian Reservation, Cause No. 83-CA-180, fall outside the coverage, scope and terms of any insurance policies issued by the plaintiff;

2. That the plaintiff be relieved of any obligation to indemnify Robert Wellman, Jr., Ramona Wellman, Craig Wellman, Terry Wellman and Wellman Ranch Company for any damages that may be awarded to Edward M. LaPlante or Verla LaPlante in said Tribal Court proceeding;

3. That the plaintiff is under no obligation to defend Robert Wellman, Jr., Ramona Wellman, Craig Wellman, Terry Wellman, and Wellman Ranch Co., from the claims of Edward M. LaPlante, and Verla LaPlante now pending in said Tribal Court proceedings; and

4. That the plaintiff be awarded its costs and disbursement herein incurred and for such other and further relief as to the Court may seem meet and just in the premises.

CURE, BORER & DAVIS

/s/ Maxon R. Davis
Attorneys for the Plaintiff
320 First National Bank Bldg.
Great Falls, Montana 59401

EXHIBIT A

IN THE BLACKFEET TRIBAL COURT
OF THE BLACKFEET INDIAN RESERVATION

EDWARD M. LaPLANTE and
VERLA LaPLANTE,
Plaintiffs,
vs.
IOWA MUTUAL INSURANCE COMPANY,
MIDLAND CLAIMS SERVICE, INC.,
ROBERT WELLMAN, JR., RAMONA
WELLMAN, CRAIG WELLMAN, TERRY
WELLMAN and WELLMAN RANCH
COMPANY, an unincorporated
business entity,
Defendants.

CAUSE NO. 83-CA-180

AMENDED COMPLAINT
AND JURY DEMAND

COUNT ONE

COME NOW the plaintiffs, EDWARD M. LaPLANTE and VERLA LaPLANTE, and for their claim allege as follows:

1. Edward M. LaPlante, Verla LaPlante, Robert Wellman, Jr., Ramona Wellman, Craig Wellman, and Terry Wellman are Indians and members of the Blackfoot Tribe.

2. Edward M. LaPlante was employed by Robert Wellman, Jr., Ramona Wellman, Craig Wellman, Terry Wellman and Wellman Ranch Company, an unincorporated business entity, as a farm laborer. That in the course and scope of his employment he was required to drive a truck.

3. On May 3, 1982, while in the course and scope of his employment in driving a truck for his e ployer, plaintiff, Edward M. LaPlante, was injured.

4. The situs of the accident occurred within the boundaries of the Blackfeet Indian Reservation.

5. The injury occurred because of a defective condition of the truck, known to the employer, but unknown to the plaintiff, Edward M. LaPlante.

6. The plaintiff, Edward M. LaPlante, suffered personal injury, loss of wages, physical pain, and mental suffering and has sustained permanent disability as a result of the accident, together with hospital and medical expenses and loss of a way of and enjoyment of life.

7. The plaintiffs, Edward M. LaPlante and Verla LaPlante, his wife, prior to the time of the accident in question had an excellent marital relationship. As a result of the injury to plaintiff, Edward M. LaPlante, he has had a personality change which has disrupted the domestic tranquility and played havoc with the marital relationship between the parties.

8. The employer, by applicable law, was required to carry Worker's Compensation coverage, but was an uninsured employer; and, therefore, Section 39-71-509 of Montana Code Annotated applies.

9. Had the employer carried Workers' Compensation coverage, plaintiff would have been entitled to all the benefits applicable to his case.

COUNT TWO

10. The plaintiffs reallege all that is contained in Count One and by this reference incorporates Count One into Count Two.

11. Iowa Mutual Insurance Company carried a policy of insurance covering employers, Robert Wellman, Jr.,

Ramona Wellman, Craig Wellman, Terry Wellman and Wellman Ranch Company for all such sums up to the applicable policy limits that the insured, above named, shall become legally obligated to pay as damages because of personal injury resulting from occurrences during the policy.

12. Iowa Mutual Insurance Company employed the firm known as Midland Claims Service, Inc. to make an investigation for them and to approach the plaintiff in view of a settlement of the case.

13. Iowa Mutual Insurance Company and Midland Claims Service, Inc., defendants, used gross negligence and bad faith in dealing with the claim and the plaintiffs in the following manner:

(a) They misrepresented pertinent facts or insurance policy provisions related to coverage at issue;

(b) They failed to acknowledge and act reasonably and promptly upon communications with respect to the claims arising under the insurance policy;

(c) They failed to adopt and implement reasonable standards for the prompt investigation of claims arising under the insurance policy;

(d) They refused to pay the reasonable value of the claim;

(e) They neglected to attempt in good faith to effect prompt, fair and equitable settlement of the claim in which the liability had become reasonably clear;

(f) They compelled the insured to institute litigation to recover amounts due under the insurance policy by offering substantially less than the amount ultimately recovered in actions brought by such insureds.

(g) They attempted to settle the claim for less than the amount which a reasonable man would believe he was entitled to by reference to written or printed advertised material;

(h) They failed to promptly settle the claim when liability had become reasonably clear under one portion of the insurance policy coverage in order to influence settlement under other provisions of the insurance policy or coverage;

(i) They failed to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for the offer of a compromise settlement.

14. The acts of bad faith in this case constituted a common law tort in and of itself, but in addition the act or acts of bad faith constitute a general business practice of the defendant insurer, Iowa Mutual Insurance Company, and Midland Claims Service, Inc.

WHEREFORE, the claimant prays judgment as follows:

1. For all the costs of medical, hospital, dental and other allied medical services as are incurred because of the accident during plaintiff, Edward M. LaPlante's, lifetime.

2. For the loss of wages sustained or which may be sustained during the course of the plaintiff, Edward M. LaPlante's, lifetime as a result of the accident.

3. For a sum of money for physical pain and mental suffering.

4. For a sum of money for the loss of a way of life;

5. For bad faith and exemplary damages in the sum of $5,000,000.00.

6. For the sum of $500,000.00 as and for Verla LaPlante's and her children's claim for loss of consortium.

7. For such other and further relief as the Court deems just and equitable.

DATED this 9th day of March, 1984.

R.V. Bottomly
Joe Bottomly
Sandra K. Watts

/s/ R.V. Bottomly
Attorneys for Plaintiffs
P.O. Box 567
Great Falls, Montana 59403

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

IOWA MUTUAL INSURANCE COMPANY,
a corporation,
Plaintiff,
vs.
EDWARD M. LaPLANTE and VERLA LaPLANTE, ROBERT WELLMAN, JR., RAMONA WELLMAN, CRAIG WELLMAN, TERRY WELLMAN, and WELLMAN RANCH COMPANY, a dissolved Montana corporation,
Defendants.

CAUSE NO. CV-84-131-GF

MOTION TO DISMISS AND
MOTION TO CONSOLIDATE

Defendants, EDWARD M. LaPLANTE and VERLA LaPLANTE, move the Court for an order dismissing Plaintiff's complaint on the grounds that this Court lacks diversity jurisdiction.

Defendants also move the Court for an order consolidating the above captioned case with the case presently pending in this Court entitled MIDLAND CLAIMS SERVICE, INC. , Plaintiff, vs. EDWARD M. LaPLANTE and VERLA LaPLANTE, THE BLACKFEET TRIBE and THE BLACKFEET TRIBAL COURT, defendants. IOWA MUTUAL INSURANCE COMPANY, Plaintiff in Intervention, vs. EDWARD M. LaPLANTE and VERLA LaPLANTE, THE BLACKFEET TRIBE OF THE BLACKFEET INDIAN RESERVATION, a Federal Corporation, and the TRIBAL COURT OF THE BLACKFEET INDIAN TRIBE, Defendants, Cause Number CV-84-101-

GF. Said motion is based on Rule 42(a) of the Federal Rules of Civil Procedure and the attached memorandum.

DATED this 18 day of June, 1984.

JOE BOTTOMLY
R.V. BOTTOMLY
SANDRA K. WATTS

/s/ Joe Bottomly
Attorneys for Defendants,
Edward M. LaPlante and Verla LaPlante
P.O. Box 567
Great Falls, Montana 59403

(Certificate of Mailing deleted in printing.)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

IOWA MUTUAL INSURANCE COMPANY,
a corporation,
Plaintiff,
vs.
EDWARD M. LaPLANTE and VERLA LaPLANTE, ROBERT WELLMAN, JR., RAMONA WELLMAN, CRAIG WELLMAN, TERRY WELLMAN, and WELLMAN RANCH COMPANY, a dissolved Montana corporation,
Defendants.

CAUSE NO. CV-84-131-GF

MEMORANDUM

INTRODUCTION

There are two declaratory actions presently pending in front of this Court. Both of them involve the same facts and parties. The actions arose as follows:

On May 3, 1982, EDWARD M. LaPLANTE was seriously injured in a traffic accident on Highway 89 within the exterior boundaries of the Blackfeet Indian Reservation. Subsequent to the accident IOWA MUTUAL INSURANCE COMPANY through its adjusting agent MIDLAND CLAIMS, investigated and adjusted the claim with the LaPLANTES on the Indian Reservation.

The LaPLANTES have filed a personal injury action, in Tribal Court, against EDWARD M. LaPLANTE's employer, WELLMAN RANCH and its members ROBERT WELLMAN, JR., RAMONA WELLMAN, CRAIG WELLMAN, and TERRY WELLMAN. The LaPLANTES

have also named IOWA MUTUAL INSURANCE COMPANY and MIDLAND CLAIMS in a count of bad faith insurance adjusting.

MIDLAND CLAIMS filed a declaratory action in Federal Court asking this Court to declare the Tribal Court had no jurisdiction over the bad faith claims against IOWA MUTUAL and MIDLAND CLAIMS. IOWA MUTUAL has since requested the Court to intervene in that action.

IOWA MUTUAL INSURANCE COMPANY has separately filed the present declaratory action seeking to escape coverage under the insurance policy.

MOTION TO DISMISS

This case must be dismissed because the Court lacks diversity jurisdiction. Plaintiff, IOWA MUTUAL, has alleged this Court has jurisdiction based on 28 U.S.C. §1332(a). This is the diversity of citizenship statute.

In order for a Federal Court to have diversity jurisdiction under 28 U.S.C. §1332, the parties must be of diverse citizenship and the Courts of the state in which the Federal Court sits must be able to entertain the action. Woods vs. Intrastate Realty Company, 337 U.S. 535, 538, 69 Sup. Ct. 1235, 1237, 93 Lawyers Addition 1524 (1949); R.J. Williams Company vs. Fort Belknap Housing Authority, F. 2d _____ (1983).

In addition, in cases involving Indians, diversity jurisdiction is precluded when state jurisdiction would infringe upon the rights of the Indians to self government. R.J. Williams vs. Fort Belknap Housing Authority, _____ F. 2d _____ (1983). For example, in Williams vs. Lee, 358 U.S. 217, 79 Sup. Ct. 269, 3 Lawyers Addition 2d, 251 (1959), the Supreme Court held that the Arizona State Court had no jurisdiction over the subject matter. That case involved a non-Indian operating a general store on the Indian Reservation. The non-Indian brought suit in Arizona State Court to collect for goods sold on credit to a tribal

member. The Court held the State jurisdiction would infringe upon "the right of reservation indians to make their own laws and be ruled by them." 220, 79 Sup. Ct. at 270.

The issue of tribal jurisdiction in the case at bar is identical to the one presented in MIDLAND CLAIMS and IOWA MUTUAL declaratory action, presently before this Court entitled MIDLAND CLAIMS SERVICE, INC., Plaintiff vs. EDWARD M. LaPLANTE and VERLA LaPLANTE, THE BLACKFEET TRIBE, and THE BLACKFEET TRIBAL COURT, Defendants, IOWA MUTUAL INSURANCE COMPANY, Plaintiff in Intervention, vs. EDWARD M. LaPLANTE, and VERLA LaPLANTE, THE BLACKFEET TRIBE OF THE BLACKFEET INDIAN RESERVATION, a Federal Corporation, and THE TRIBAL COURT OF THE BLACKFEET INDIAN TRIBE, Defendants, Cause No. CV-84-010-GF.

Both cases arise from a traffic accident and subsequent insurance claims adjusting on the Indian Reservation. The LaPLANTES have moved for summary judgment in the latter case. Their arguments regarding jurisdiction are briefed in their Memorandum in Support of their Motion. A copy of that Memorandum is attached hereto and by this reference is made a part hereof. The Defendants incorporate these arguments into its present motion. For the reasons stated in the Memorandum the Plaintiffs complaint in the present case must be dismissed.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

MIDLAND CLAIMS SERVICE, INC.
Plaintiff,
vs.
EDWARD M. LaPLANTE and VERLA LaPLANTE,
THE BLACKFEET TRIBE, and
BLACKFEET TRIBAL COURT
Defendants.

IOWA MUTUAL INSURANCE COMPANY,
Plaintiff in Intervention
vs.
EDWARD M. LaPLANTE and VERLA LaPLANTE,
THE BLACKFEET TRIBE OF THE
BLACKFEET INDIAN RESERVATION, a
Federal Corporation and TRIBAL
COURT OF THE BLACKFEET INDIAN TRIBE,
Defendants.

CAUSE NO. CV-84-010-GF

MEMORANDUM IN SUPPORT OF
EDWARD M. LaPLANTE'S AND
VERLA LaPLANTE'S MOTION
FOR SUMMARY JUDGMENT

THE ISSUE

The issue presented to the Court by this Motion for Summary Judgment is whether the Blackfeet Tribal Court has jurisdiction over a third party action against an insurance company for bad faith, when the insurance policy was sold to an Indian residing on the reservation, the injured

person is an Indian residing on the reservation, the accident occurred on the reservation, and investigation and settlement offers were made on the reservation.

FACTS

EDWARD M. LaPLANTE and VERLA LaPLANTE are enrolled members of the Blackfeet Tribe, residing on the Blackfeet reservation. EDWARD M. LaPLANTE's employer is the Wellman Ranch, whose members consist of Ramona Wellman and her children Robert Wellman, Jr., Craig Wellman, and Terry Wellman. All of the Wellmans' are enrolled members of the Blackfeet Tribe, residing on the reservation.

On May 3, 1982, EDWARD M. LaPLANTE was seriously injured in an automobile accident. The accident occurred on Highway 89 within the boundaries of the reservation. The accident occurred while EDWARD M. LaPLANTE was in the course and scope of his employment. The Wellmans' had no Workers' Compensation insurance. Mr. LaPLANTE contends the accident was due to the defective condition of the vehicle resulting from his employer's negligence.

IOWA MUTUAL INSURANCE COMPANY is the insurer of the Wellman Ranch. Soon after Mr. LaPLANTE was out of the hospital he was contacted at his residence by IOWA MUTUAL's adjusting agent, MIDLAND CLAIMS. MIDLAND CLAIMS investigated the case on the reservation. They spoke to the LaPLANTES at their residence and took Mr. LaPLANTE's statement. MIDLAND CLAIMS then wrote the LaPLANTE's at their residence offering TWO THOUSAND DOLLARS ($2,000.00) as settlement of the case and refused to negotiate further. (See Edward LaPlante's affidavit.)

The LaPLANTES then brought a personal injury suit in Tribal Court against the Wellmans and Wellman Ranch. They also named IOWA MUTUAL INSURANCE COM-

PANY and MIDLAND CLAIMS as defendants, in a separate count, alleging bad faith insurance adjusting. (A copy of said complaint is attached hereto and by this reference made a part hereof.)

IOWA MUTUAL and MIDLAND CLAIMS filed a motion to dismiss in Tribal Court alleging, (among other things), that the Tribal Court had no jurisdiction over the bad faith actions against them. In a memorandum opinion dated February 27, 1984, the Tribal Judge held that the Tribal Court did have jurisdiction over the bad faith claims. (A copy of said memorandum is attached hereto and by this reference made a part herof.)

Concurrently with the tribal proceedings, MIDLAND CLAIMS filed the case at bar requesting this Court to declare that the Tribal Court had no jurisdiction over the bad faith claims and enjoin the LaPLANTES and the Tribal Court from proceeding further.

The LaPLANTES moved to dismiss on the basis that the Blackfeet Tribe was an indispensable party which was not joined. The Court granted the LaPLANTES' motion. MIDLAND CLAIMS has since joined the Blackfeet Tribe and the Tribal Court as defendants. Also, IOWA MUTUAL has since requested the Court for permission to intervene.

THE LAW

INTRODUCTION

The Blackfeet Tribal Court has jurisdiction over the bad faith claims against IOWA MUTUAL and MIDLAND CLAIMS. When IOWA MUTUAL and MIDLAND CLAIMS voluntarily chose to transact business on the Indian reservation with tribal members they submitted themselves to the jurisdiction of the tribe. The United States Supreme Court has repeatedly held that tribes have jurisdiction over persons doing business on the reservation.

Of course, the seminal case is Williams vs. Lee, 358 U.S. 217, 79 Sup. Ct. 269, 3 Lawyers Ed. 2d, 251 (1959). In that case U.S. Supreme Court held that a non-Indian operating a general store on a Navajo Reservation could not bring suit in state court to collect for goods sold to an Indian couple on credit. The Court held the Tribal Court had exclusive jurisdiction of the case. The Court noted it was immaterial that the merchant was not an Indian. It was enough that he was on the reservation and the transaction with an Indian took place there. 538 U.S. at 223.

The Williams case has been followed by recent Supreme Court decisions. In Merrian vs. Jicarilla Apache Tribe, 455, U.S. 130 (1982), the Supreme Court upheld the tribe's severance tax on oil and gas imposed on non-Indians doing business on the reservation. The Court observed that the petitioners "availed themselves of the privilege" of carrying on a business on the reservation, 455 U.S. at 137. The Court specifically accepted the position that the tribe's power over nonmembers necessarily includes power to place conditions on reservation conduct, 455 U.S. at 144. This power derives from the tribe's general authority as sovereign, to control economic activity within its jurisdiction. A nonmember who enters the jurisdiction of the tribe remains subject to the risks that the tribe will exercise its sovereign power, 455 U.S. at 145. Thus, the Court stated that a nonmember's presence and conduct on Indian lands are conditioned by the limitations the tribe may choose to impose, 455 U.S. at 147.

In Washington vs. Confederate Tribes of Colville Indian Reservation, 447 U.S. 134, 65 Lawyers Ed. 2d, 10, 100 Sup. Ct. 2069 (1980) the court stated that Indian tribes possess a "broad measure of civil jurisdiction over activities of non-Indians on Indian reservation lands in which tribes have significant interest," 447 U.S. at 152.

In Santa Clara Pueblo vs. Martinez, 436 U.S. 49 (1978), the court specifically approved of its holding in Williams.

436 U.S. at 60, ftn. 9. In that case the Supreme Court also observed "Tribal Courts have repeatedly been recognized as appropriate forums for the exclusive adjudication of disputes affecting important personal and property interest of both Indians and non-Indians, 436 U.S. at 65.

In Montana vs. United States, 450 U.S. 544, the Supreme Court observed that a tribe may regulate the activities of nonmembers who enter consensual relationships with the tribe or its members through commercial dealing, contracts, leases, or other arrangements. 450 U.S. at 644-65.

The Ninth Circuit has also articulated the inherent power of a tribe to regulate business activities on the reservation. For example, in Snow vs. Quinault Indian Reservation , 709 Fed. 2d 1319 (Ninth Circuit, 1983), the Court upheld a tribe's business fee on a non-Indian doing business on fee land. Citing the Merrian case, the Ninth Circuit observed that the tribe had the general authority to control economic activity on the reservation. 709 Fed. 2d at 1322.

In the present case the insurance company and its adjusting agent subjected itself to the jurisdiction of the Tribal Court by carrying on business activities on the reservation with tribal members. IOWA MUTUAL COMPANY sold a number of insurance policies to the Wellmans. The insurance company charged and received insurance premiums for liability coverage pursuant to its contract. The Wellmans are enrolled members of the Blackfeet Tribe residing on the Indian reservation.

When Wellmans' employee, EDWARD M. La PLANTE, was injured on the reservation, IOWA MUTUAL's adjusting agent, MIDLAND CLAIMS, came on the reservation to investigate and negotiate the case.

It cannot be seriously argued that when IOWA MUTUAL sold liability insurance to Indians on the reservation that they could not anticipate claims arising on the reservation by tribal members. When a claim under this

contract arose on the reservation from an injury of another Indian, the tribe unquestionably had jurisdiction to regulate this economic activity. This power, of course, extended to the Tribal Court's determination of whether the insurance company's conduct violated the requirement of good faith in dealing with the insured party.

The adjusting and negotiating of insurance claims unquestionably affects important societal interests. The State of Montana has specifically adopted statutory prohibition against unfair trade practices by insurance companies in the negotiation and settlement of claims. See generally 33-18-101 etc. RCM. A number of jurisdictions have held that the injured person may sue the insurer directly for bad faith and failure to settle. See e.g. Thompson vs. Commercial Union Insurance Company of New York, 250 S. 2d 259, 264 (Florida, 1971); Royal Globe Insurance Company vs. Superior Court, 23 Cal. 3rd 800, 592 P. 2d 329 (1979); Klaudt vs. Flink, 658 P. 2d 1065 (Montana, 1983); Jenkins vs. J.C. Penney Casualty Insurance Company, 280 S.E. 2d 252 (West Virginia, 1981). Certainly the tribe's interest in requiring insurance companies to act in good faith is no less important than their interest in the recovery of the debt owed on merchandise which was involved in the Williams case. There can be little doubt that the tribe has jurisdiction over the bad faith claim in the present case.

NATIONAL FARMERS UNION INSURANCE
vs. CROW TRIBE

_____ Fed. Sup. _____, 40 Mont. St. Rpt. 783 (1983)

This court, in its memorandum and order dated May 23, 1984, noted without deciding, that the rationale in National Farmers Union Insurance vs. Crow Tribe may be dispositive of the present case. Defendants respectfully submit that the case at bar is significantly different from that case. The distinction lies in the fact that in National Farmers Union, the tort arose on non-Indian land. Whereas in the present case, the tort of bad faith arose on Indian land. This is important because of the significant territorial component of tribal power. See Merrian vs. Jicarilla, supra 455 U.S. at 142.

The LaPLANTES' bad faith claims arose on Indian land within the reservation. The tort of bad faith insurance adjusting "arises" where the payment is to be made to the insured or the beneficiary.

For example, in Whalen vs. Snell, 40 St. Rpt. 1283, ____ F. 2d. _____ (Montana, 1983), the Montana Supreme Court held that the tort of bad faith failure to pay attorneys fees arose from a breach of an obligation where payment was to be made. 40 St. Rpt. 1285. This is consistent with other court cases as well as general law. See for instance Halliwill vs. Mutual Service Casualty Insurance Company, 100 N.W. 2d 817, 818 (1960); Alliance Insurance Company vs Ulysses Volunteer Firemen Relief Fund, 529 P. 2d 171, (Kansas, 1974); 44 Am Jur 2d - Insurance - §1898; 46 CJS Insurance §1196. In the case of a breach of an obligation to pay under an insurance policy, the cause of action arises where the insurer is to pay the loss. This is at the residence of the insured or the beneficiary. Alliance Life Insurance vs. Ulysses Volunteer Firemen Relief Fund supra; Halliwill vs. Mutual Service Casualty Insurance Company, supra.

In the present case the tort of bad faith insurance negotiation arose either at the residence of the insured or the injured party. Both parties are Indians residing on the reservation. Thus, the cause of action against MIDLAND CLAIMS and IOWA MUTUAL INSURANCE COMPANY arose on Indian lands. This case is, therefore, distinguishable from National Farmers Union Insurance in which the tort arose on non-Indian land.

Rather, it falls directly under the Ninth Circuit's holding in Williams Company vs. Belknap Housing Authority, _____ F. 2d _____ (1983). In that case the Ninth Circuit specifically stated that "the Tribal Court is generally the exclusive forum for the adjudication of disputes affecting interests of both Indians and non-Indians which arise on the reservation."

It is important to note that the LaPLANTE's claim of bad faith is a wholly separate tort from the personal injury action. The personal injury action arose from an accident occurring on Highway 89 within the boundaries of the reservation. Plaintiff recognizes there is a split of authority regarding whether an accident on a highway within the boundaries of the reservation, confers sufficient territorial jurisdiction over a nonmember. See State of Wyoming vs. District Court of Ninth Judicial District 617 P. 2d 1056 (Wyoming, 1980), (holding Tribal Court had exclusive jurisdiction of action arising from collision on a highway within an Indian reservation); compare Swift Transportation vs. John, 546 Fed. Supp. 1185 (1982).

The LaPLANTES, of course, maintain that an accident on a U.S. Highway within the reservation confers jurisdiction on the Tribal Court over nonmembers. Nevertheless, the Court need not decide that issue in the present case. As noted above, the claims against IOWA MUTUAL and MIDLAND CLAIMS are distinct from the personal injury action. Therefore, as the analysis above indicates, the law provides that those claims arose on Indian land within the reservation.

CONCLUSION

MIDLAND CLAIMS' and IOWA MUTUAL's business activities on the reservation with members of the tribe subjected them to the sovereign power of the tribe to regulate and control such activities on the reservation. The Blackfeet Tribal Court, therefore, properly has jurisdiction of the bad faith insurance adjusting case which is presently filed by the LaPLANTES against them in Tribal Court.

DATED 17 this day of June, 1984.

JOE BOTTOMLY
R.V. BOTTOMLY
SANDRA K. WATTS

/s/ Joe Bottomly
Attorneys for Defendants
P.O. Box 567
Great Falls, Montana 59403

(Certificate of Mailing deleted in printing.)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

MIDLAND CLAIMS SERVICE, INC.
Plaintiff,
vs.
EDWARD M. LaPLANTE and VERLA LaPLANTE,
Defendants.

CAUSE NO. CV-84-010-GF

AFFIDAVIT IN SUPPORT OF LaPLANTE'S MOTION TO DISMISS

ss:
STATE OF MONTANA
County of Cascade

I, EDWARD M, LaPLANTE, after being first duly sworn, do say as follows:

1. I am one of the Plaintiffs in the case of Edward M. LaPlante and Verla LaPlante, Plaintiffs, versus Iowa Mutual Insurance Company, Midland Claims Service, Inc., Robert Wellman, Jr., Ramona Wellman, Craig Wellman, Terry Wellman, And Wellman Ranch Company, an unincorporated business entity, Defendants. Said action is filed in the Blackfeet Tribal Court of the Blackfeet Indian Reservation Cause No. 83-CA-180. A copy of the Amended Complaint and Jury Demand is attached hereto as "Exhibit A" and by this reference made part of this Affidavit.

2. My wife Verla LaPlante, my employers Ramona Wellman, as well as her children Robert Wellman, Jr., Craig Wellman, and Terry Wellman are indians and members of the Blackfeet Tribe as am I. We all reside within the boundaries of the Blackfeet Indian Reservation.

3. The place where the accident occurred as alleged in the attached Complaint was within the Blackfeet Indian Reservation.

4. Shortly after I was out of the hospital I was contacted at my home by a person from Midland Claims. He said he was adjusting this case for Iowa Mutual Insurance Company, which is my employer's insurance company. He said that he was investigating the claim on the indian reservation and would like to speak with me. After this conversation, the representative from Midland Claims did in fact come to my residence. He took my tape recorded statement as well as discussed the case with me. This person left his card with me and my wife and told us we should contact Midland Claims.

5. We did call the number provided by the man from Midland Claims. Shortly thereafter at the request of Midland Claims, we came down to Great Falls, and spoke to another representative of Midland Claims.

6. After we returned to our residence on the reservation, we received a letter February 4, 1983, from Stephen Tarrell, an adjustor from Midland Claims. This letter informed us that they would not negotiate with us regarding the settlement of this claim and would only pay a very small amount of my medical bills. A copy of this letter is attached hereto and by this reference made a part of this Affidavit.

Dated this 11 day of June, 1984.

/s/ Edward M. LaPlante

Subscribed and sworn to before me this 11 day of June, 1984.

(Notarial Seal)
Notary Public, State of Montana
Residing at Cut Bank, Montana
My commission expires 4/5/86

(Certificate of Mailing deleted in printing.)

EXHIBIT A
Attached to LaPlante's Affidavit

MIDLAND CLAIMS SERVICE, INC.
P.O. Box 2425
Great Falls, MT 59403

Phone (406) 453-5496

Re: Insured, Wellman Ranch
Date of Loss: 5/3/82
Our File G CM-8374

Michael LaPlante
P.O. Box 542
Browning, MT 59417

February 4, 1983

Dear Mr. LaPlante,

As you are aware, we are the insurance adjusting firm representing Wellman Ranch's insurance company, Iowa Mutual, and have been investigating your accident of May 5, 1982, at which time you were injured. On January 11, 1983, you met with Mr. Ray Kicker at which time he offered you $2,000.00 for the settlement of your claim in its entirety. At that time, you informed him that you would settle for between $70,000.000 and $75,000.00. As your demand is terribly unreasonable, we do not feel it worthwhile even to make a counter offer. If, however, you intend to be reasonable, please contact our office.

We have learned that you will be having surgery for the injury to yourself. Our company supplies $1,000.00 medical payments coverage. We have spoken with your physician who has informed us that his fee for this operation will be $600.00. We have agreed to pay this physician directly that $600.00 following your operation. The remaining $400.00 under the medical payments coverage of this

policy would be directed towards the hospital bill. No additional payment will be made for any medical bills by this office.

We await your reply to our letter.

Sincerely yours,

Midland Claims Service, Inc.

/s/ Stephen R. Terrell, Adjuster

IN THE BLACKFEET TRIBAL COURT
OF THE BLACKFEET INDIAN RESERVATION

EDWARD M. LaPLANTE and
VERLA LaPLANTE,
Plaintiffs,
vs.
IOWA MUTUAL INSURANCE COMPANY,
MIDLAND CLAIMS SERVICE, INC.,
ROBERT WELLMAN, JR., RAMONA
WELLMAN, CRAIG WELLMAN, TERRY
WELLMAN and WELLMAN RANCH
COMPANY, an unincorporated
business entity,
Defendants.

CAUSE NO. 83-CA-180

AMENDED COMPLAINT
AND JURY DEMAND

COUNT ONE

COME NOW the plaintiffs, EDWARD M. LaPLANTE and VERLA LaPLANTE, and for their claim allege as follows:

1. Edward M. LaPlante, Verla LaPlante, Robert Wellman, Jr., Ramona Wellman, Craig Wellman, and Terry Wellman are Indians and members of the Blackfoot Tribe.

2. Edward M. LaPlante was employed by Robert Wellman, Jr., Ramona Wellman, Craig Wellman, Terry Wellman and Wellman Ranch Company, an unincorporated business entity, as a farm laborer. That in the course and scope of his employment he was required to drive a truck.

3. On May 3, 1982, while in the course and scope of his employment in driving a truck for his employer, plaintiff, Edward M. LaPlante, was injured.

4. The situs of the accident occurred within the boundaries of the Blackfeet Indian Reservation.

5. The injury occurred because of a defective condition of the truck, known to the employer, but unknown to the plaintiff, Edward M. LaPlante.

6. The plaintiff, Edward M. LaPlante, suffered personal injury, loss of wages, physical pain, and mental suffering and has sustained permanent disability as a result of the accident, together with hospital and medical expenses and loss of a way of and enjoyment of life.

7. The plaintiffs, Edward M. LaPlante and Verla LaPlante, his wife, prior to the time of the accident in question had an excellent marital relationship. As a result of the injury to plaintiff, Edward M. LaPlante, he has had a personality change which has disrupted the domestic tranquility and played havoc with the marital relationship between the parties.

8. The employer, by applicable law, was required to carry Worker's Compensation coverage, but was an uninsured employer; and, therefore, Section 39-71-509 of Montana Code Annotated applies.

9. Had the employer carried Workers' Compensation coverage, plaintiff would have been entitled to all the benefits applicable to his case.

COUNT TWO

10. The plaintiffs reallege all that is contained in Count One and by this reference incorporates Count One into Count Two.

11. Iowa Mutual Insurance Company carried a policy of insurance covering employers, Robert Wellman, Jr., Ramona Wellman, Craig Wellman, Terry Wellman and Wellman Ranch Company for all such sums up to the applicable policy limits that the insured, above named, shall become legally obligated to pay as damages because of personal injury resulting from occurrences during the policy.

12. Iowa Mutual Insurance Company employed the firm known as Midland Claims Service, Inc. to make an investigation for them and to approach the plaintiff in view of a settlement of the case.

13. Iowa Mutual Insurance Company and Midland Claims Service, Inc., defendants, used gross negligence and bad faith in dealing with the claim and the plaintiffs in the following manner:

(a) They misrepresented pertinent facts or insurance policy provisions related to coverage at issue;

(b) They failed to acknowledge and act reasonably and promptly upon communications with respect to the claims arising under the insurance policy;

(c) They failed to adopt and implement reasonable standards for the prompt investigation of claims arising under the insurance policy;

(d) They refused to pay the reasonable value of the claim;

(e) They neglected to attempt in good faith to effect prompt, fair and equitable settlement of the claim in which the liability had become reasonably clear;

(f) They compelled the insured to institute litigation to recover amounts due under the insurance policy by offering substantially less than the amount ultimately recovered in actions brought by such insureds.

(g) They attempted to settle the claim for less than the amount which a reasonable man would believe he was entitled to by reference to written or printed advertised material;

(h) They failed to promptly settle the claim when liability had become reasonably clear under one portion of the insurance policy coverage in order to influence settlement under other provisions of the insurance policy or coverage;

(i) They failed to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for the offer of a compromise settlement.

14. The acts of bad faith in this case constituted a common law tort in and of itself, but in addition the act or acts of bad faith constitute a general business practice of the defendant insurer, Iowa Mutual Insurance Company, and Midland Claims Service, Inc.

WHEREFORE, the claimant prays judgment as follows:

1. For all the costs of medical, hospital, dental and other allied medical services as are incurred because of the accident during plaintiff, Edward M. LaPlante's, lifetime.

2. For the loss of wages sustained or which may be sustained during the course of the plaintiff, Edward M. LaPlante's, lifetime as a result of the accident.

3. For a sum of money for physical pain and mental suffering.

4. For a sum of money for the loss of a way of life;

5. For bad faith and exemplary damages in the sum of $5,000,000.00.

6. For the sum of $500,000.00 as and for Verla LaPlante's and her children's claim for loss of consortium.

7. For such other and further relief as the Court deems just and equitable.

DATED this 9th day of March, 1984.

R.V. Bottomly
Joe Bottomly
Sandra K. Watts

/s/ R.V. Bottomly
Attorneys for Plaintiffs
P.O. Box 567
Great Falls, Montana 59403

IN THE BLACKFEET TRIBAL COURT
OF THE BLACKFEET INDIAN RESERVATION

EDWARD M. LaPLANTE and
VERLA LaPLANTE,
Plaintiffs,

vs.

IOWA MUTUAL INSURANCE COMPANY,
MIDLAND CLAIMS SERVICE, INC.,
ROBERT WELLMAN, JR.,
Defendants.

MEMORANDUM AND ORDER

January 17, 1984, this case came on for hearing on Defendants', Iowa Mutual Insurance Company and Midland Claims Service, Inc. Motion to dismiss for lack of jurisdiction, insufficiency of process and failure to properly invoke the jurisdiction of the Tribal Court. Plaintiffs Edward and Verla LaPlante appeared through counsel, as did the Defendants, Iowa Mutual and Midland Claims. Defendant Robert Wellman, Jr. made no appearance.

FACTUAL BACKGROUND

For the purpose of reviewing the Defendants' Motion to Dismiss, the Court will take the facts as stated in the Complaint as true.

On May 3, 1982, while employed by Robert Wellman, Jr., Plaintiff Edward LaPlante was injured as a result of an automobile accident. Because of the defective condition of the vehicle he was operating, said condition being known by the owner of the vehicle, Robert Wellman, Jr., Plaintiff wrecked the vehicle. Defendant Iowa Mutual, the insuror of the Wellman vehicle, employed Defendant Midland Claims to investigate the accident on Iowa Mutual's behalf. In investigating and negotiating settlement of Plaintiff LaPlante's claim, Iowa Mutual and Midland Claims engaged in various acts of bad faith, said acts constituting a general business practice.

Defendants Iowa Mutual and Midland Claims attack the Plaintiff's complaint on the grounds that the Tribal Court's jurisdiction has not been properly invoked, and they were not properly served according to Rule 12 (D) (4) of the Tribal Rules of Civil Procedure, Blackfeet Law and Order Code of 1967 as amended. Defendants Iowa Mutual and Midland Claims also argue that even if there had been proper service of process and the Court's jurisdiction properly invoked, they must still be dismissed because the Tribal Court has no jurisdiction, as a matter of federal and Tribal law, over non-indian insurance companies and their agents on the Blackfeet Reservation. Plaintiff LaPlante responds that any defects in service or pleading are not totally defective to the complaint, and that service by mail, as in this case, is within the parameters of the Tribal Code. Relying on past practice and their interpretation of federal Indian law principles, Plaintiffs LaPlante further argue the Tribal Court has jurisdiction over Defendants Iowa Mutual and Midland Claims.

The extent of jurisdiction of the Blackfeet Tribal Court is the same as the jurisdiction of the Tribe-as-a-Tribe. As such, the Court has jurisdiction over the Defendants, Iowa Mutual and Midland Claims, so long as Tribal members or Tribal interests are involved and these Defendants engage in conduct within the Reservation. While the method of process which was employed to give notice to Iowa Mutual and Midland did not comport with the letter of the Tribal Code, it was consistent with the spirit and purpose of the Code, which is to give notice. However, the Plaintiffs have failed to allege sufficient facts upon which the Court can base jurisdiction. Therefore, the Defendants' Motion to Dismiss for lack of jurisdiction and insufficiency of process are denied. The Defendants' Motion to Dismiss because of failure to properly invoke the jurisdiction of the Court is well taken. The Plaintiffs will be given leave to amend their complaint to allege sufficient facts upon which the Court can determine its jurisdiction.

ANALYSIS

I.

Because both Defendants in this case have argued that even if service of process and the proper jurisdictional allegations were made, the Tribal Court would still be without jurisdiction over them, that issue will be addressed first. In determining the extent of the Court's jurisdiction, consideration will be given to federal case law, statutes and treaties, and to the jurisdiction of the Tribal Court under Tribal law.

Both Iowa Mutual and Midland Claims have argued that as a matter of federal law the Blackfeet Tribe is without jurisdiction, with civil regulatory or civil adjudicatory, over the Plaintiffs' assertion of bad faith by these insurance companies in settling Plaintiff's claim. Assuming, as was indicated in the hearing, that the accident out of which this claim arises occurred within the Blackfeet Indian Reservation and that both Defendants, or their agents, engaged in business activities on the Reservation and that both Plaintiffs and Defendant Wellman are Tribal members, the Defendants' argument cannot withstand challenge.

Indian Tribes have long been recognized as semi-sovereign entities with the power to govern the activities of their members and their territory. Wocester vs. Georgia, 31 U.S. 515 (1833); United States vs. Kagama, 118 U.S. 375 (1889); Merrion vs. Jicarilla Apache Tribe, 455 U.S. 130 (1982); United States vs. Wheeler, 435 U.S. 313, 335 (1978).

Tribes, Trans-Canada Enterprises, Ltd. vs. Muckelshoot Indian Tribe, 634 F. 2d 474, 476-77 (9th Cir. 1980), and by virtue of their acceptance into the U.S. Territory, Indian Tribes have been implicitly divested of those attributes of inherent sovereignty which are inconsistent with over-riding national interests. See Generally Confederated Salish & Kootenai Tribes vs. Namen, 665 F. 2d 951, 962-964 (9th Cir. 1982); Babbit Ford, Inc., et al. vs. Navajo Tribe, et al., ——— F.2d ———, 10 ILR 2153, 2157 (9th Cir. 1983).

Thus, while Tribes are not possessed of the full attributes of inherent sovereignty, they do retain "some forms of civil jurisdiction over non-Indians on their Reservations," Montana vs. United States, 450 U.S. 544, 565 (1981). With respect to Tribal Courts, the United States Supreme Court has long recognized these accouterments of Tribal self-government "as the appropriate forums for the exclusive adjudication of disputes affecting important personal and property interests of both Indians and non-Indians. Martinez, 436 U.S. at 65 (citations and footnote omitted).

The power of Indian Tribes to exercise civil jurisdiction over non-members (non-Indians) on their reservations derives from three separate aspects of this inherent sovereignty. In Montana, the United States Supreme Court stated:

> A tribe may regulate, through taxation, licensing, or other means, the activities of non-members who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements. (Citations omitted). A tribe may also retain inherent power over the conduct of non-Indians on fee lands within its Reservation when that conduct threatens or has some direct effect

> on the political integrity, the economic security, or the health or welfare of the tribe.

Montana, 450 U.S. at 464-65 (1981) (Citations omitted). The civil authority exercised in these circumstances derives from the Tribes' power of territorial management within their reservations and their power to protect important interests of the Tribes and their members. Merrion, Supra; Montana, Supra. (Emphasis added.) The third aspect of sovereignty which empowers Indian Tribes to exercise civil authority over the conduct of non-Indians anywhere within their reservations, is the Tribes' power to completely exclude non-members and non-Indians from their Reservations. Merrion vs. Jicarilla Apache Tribe, 455 U.S. 130, 141-44 (1982). When the non-member enters Tribal lands or engages in business with the Tribe or its members, he subjects himself to the civil jurisdiction of the Tribe. Id. at 142.

A.

Both Iowa Mutual and Midland Claims argue that the Blackfeet Tribe has been divested of the inherent power to exercise civil jurisdiction over the activities of non-indian insurance companies engaging in activities within the Blackfeet Reservation. Both Defendants rely on the principles set forth in Montana vs. United States, which are outlined above, in arguing that they have not engaged in any consensual commercial relationships with the Plaintiffs, and that the accident out of which this case arises does not directly affect or threaten the Blackfeet Tribe in any manner. Midland Claims states that the federal cases Swift Transportation vs. John, 546 F. Supp. 1185 (D.C. Army P.) and National Farmers Union Ins. vs. Crow Tribe, control this case. Assuming, again as was stated at oral argument, that the Plaintiffs and Defendant Wellman are members of the Blackfeet Tribe and the accident occurred on the Reservation, the principles of Tribal jurisdiction as set out by the U.S. Supreme Court compel a different conclusion.

Defendant Iowa Mutual entered into a consensual contract with Defendant Wellman to insure against certain risks which might result in injury or loss to Wellman, or for which he might become liable. Assuming Wellman's place of residence and business is the Blackfeet Reservation. It is reasonable to believe that any accident which might be covered by the insurance policy would occur on the Reservation. Further, it is general knowledge that insurance is not free. Wellman and Iowa Mutual thus have a commercial relationship, which, in this case, results in performance of their contract on the Blackfeet Reservation.

In the sense that Iowa Mutual undertook to insure Wellman against exactly the kind of claim being asserted by the Plaintiffs, they stand in his shoes as a member. Iowa Mutual, of course, is not a member of the Tribe. However, Iowa Mutual is obligated to pay, up to the policy limits, if Wellman is found liable by this Court, and they may be required to assert any defenses available to Wellman in any court of law. Indeed it is fair to believe Wellman purchased the insurance just for such a purpose as the incident at issue here.

Midland Claims acts as Iowa Mutual's agent. They gather information from which Iowa Mutual can determine the extent of Wellman's liability. In so doing, Midland engages in various activities including visiting the scene of the accident, interviewing witnesses and interviewing the claimant. In this case, Midland is required to perform these activities on the Blackfeet Reservation. While the site of the accident may have been non-trust land, it nevertheless occurred within the Reservation. This Court disagrees with the Swift Court's determination that the right-of-way status of the highway somehow divests the Tribe of jurisdiction. Especially since in this case the Plaintiffs and Defendant involved in the accident would appear to be Tribal

members, and the Defendants Iowa Mutual and Midland Claims are involved as the result of a consensual commercial relationship with Defendant Wellman. Because of their relationship with Defendant Wellman, the activities of Iowa Mutual and Midland Claims fall squarely within the first prong of the Montana test, thereby allowing the Tribe to exercise jurisdiction over them.

At least where both parties are members of the Tribe, as in this case, the activities of the Defendants Iowa Mutual and Midland Claims, in defending the position of Wellman or paying off on the policy, have a direct effect on or threaten the health and welfare of the Tribe. After all, the Tribe is made up of its members and the welfare and health of the Tribe is a function of the health and welfare of those members. Directly contrary to the arguments of the Courts in National Farmers Union and Swift, the United States Supreme Court has recognized the rights accruing to the tribal entity, in turn accrue to the individual members. See McClanahan vs. Arizona State Tax Commission, 411 U.S. 164, 181 (1973); see also Babbit Ford, 10 ILR at 2155. The underlying dispute between the Tribal members regarding liability for the accident certainly affects the health and welfare of the members involved and their families.

Finally, just by engaging in activities within this Reservation, the Defendants Iowa Mutual and Midland Claims have subjected themselves to the jurisdiction of the Tribe. The place of ultimate performance of the insurance contract, which was purchased by a Tribal member, is on the Blackfeet Reservation. As was correctly noted by the Plaintiff, Tribal Court is the exclusive forum for resolving the dispute between the Tribal members. See Kennerly vs. District Court, ——— U.S. ———, (197—) (Tribal Court exclusive forum for actions by or against Indians arising on the Reservation.)

B.

Both Defendants argue that the Tribal Court's jurisdiction is limited by Article VI, Section F (K) of the Blackfeet Tribal Constitution. The pertinent parts of that provision provide that the Tribal Council shall be empowered "to establish minor courts for the adjudication of claims or disputes arising amongst members of the Tribe ..." Relying on this provision both Iowa Mutual and Midland argue the Tribal Court has no jurisdiction over the non-Indian entities which they operate through. Because this Court has already construed the Constitutional provision relied upon to mean the Tribal Court's jurisdiction is the same as the Tribe's itself, th Defendant's argument has been foreclosed.

In Blackfeet Tribe vs. East Glacier Water and Sewer District, this Court had occasion to address the same arguments with regard to Article VI, Section F (K) as have been made in the instant case. There the Court first gave consideration to the generally low educational level of the Blackfeet people adopting the Constitution, and the beneficial policy behind the Indian Reorganization Act of 1934, 25 U.S.C. §461, et seq., in deciding to apply two cannons of construction often applied in federal Indian law. First, written documents entered into by Indians (the Constitution was also drafted by non-Indians in Washington, D.C.) are to be construed as they probably understood them. Second, that laws passed for the benefit of Indians are to be construed to their benefit.

The Court then considered a variety of factors in construing Article VI, Sec. F (K) to mean the Court's jurisdiction over non-Indian entities would be, essentially, the same as the Tribes', as a Tribe, under federal law. Consideration was given to the probable intent of the original adopters of the Constitution as evidenced by the long-time assumption of Tribal Court jurisdiction over non-Indians on the Reservation; the Indian Civil Rights Act of 1968, 25

U.S.C. § 1301 et seq., which gives non-Indians rights as against Tribal governments which may be exercised in Tribal Court and the Congress' apparent understanding of the jurisdiction of Tribal courts in enacting it; the obvious understanding of the federal court as evidenced by their holdings in Kennerly vs. District Court, 400 U.S. 423 (1971) and Rollengson vs. Blackfeet Tribe, 244 F. Supp. 474 (1965), both of which held the Blackfeet Tribal Court to be the exclusive forum for litigating disputes between non-Indians and the Tribe or its members which arise within the Reservation; and to the general policy consideration favoring jurisdiction over non-Indians in the required circumstances. Important in the policy consideration was the poor economic state of the Reservation and the devastating impact which would occur if non-Indian merchants could not use the Court in creditor-debtor actions against members. The Court felt, in short, that to shut non-Indians out of Tribal Court would destroy the fragile economy of the Reservation.

The Defendants in this hearing argued that it would be a broad interpretation of the Constitutional section at issue if it were construed to allow jurisdiction in this matter. As was recently noted by the Ninth Circuit Court of Appeals, Tribal Courts are the interpreters of Tribal Law. R.J. Williams vs. Ft. Belknap Housing Authority, F.2d —— . ——, 10 ILR, (9th Cir. 1983). This court has determined that the adopters of the organic law of the Blackfeet Tribe intended that the jurisdiction of the Tribal Courts be commensurate with the jurisdiction of the Tribe as a Tribe.

II.

Both Defendants Iowa Mutual and Midland Claims have argued that the Court is without jurisdiction because of insufficiency of service. Their argument is that because they were served by mail, and not in person (physically), as called for by Rule 12 (D)(4), Rules of Civil Procedure, Blackfeet Law and Order Code of 1967 as amended (hereinafter "Rules"), and the mails are not "a person appointed by the Court to serve process," Rule 12 (A) & (C), Rules, service of process in this case was invalid. The Defendants further argue that if they could not be found on the Reservation the complaint should have been left at their place of business with the person in charge. Rule (12) (D) (4). The Court agrees with the Plaintiffs that service of process in this case, though not technically correct, nevertheless served the essential purpose of giving notice and an opportunity to defend.

Tribal Courts are not state courts. While the two Courts serve the same functions, they are organized in different manners and have different approaches to the law. This Court, like many Tribal Courts, is pressed for financial and human resources. Because of this there must be, from time-to-time, deviations from the strict requirements of the Code so that the Court can continue to operate in some manner. Such a situation occurred in this case.

The Tribal Police or a person appointed for that purpose may serve process according to Rule 12 of the Rules. The Tribal Police are now operated by and through the Bureau of Indian Affairs. For some time, including the period prior to and through the filing of the complaint, the Police have refused to serve process. A process server has been employed by the Court at the present and in the past, to serve process. However, at the time the complaint was filed, budget restraints resulted in the process server being layed off for a period. During this interim all process was served by mail. In a sense, the Court appointed the U.S. Post Office as a process server.

What is important is that the Defendants were served and are now able to contest the claims against them. Service of process in the federal courts is now allowed by mail; no doubt because such service is consistent with general motions of fairness and due process. Thus service of process in this case served its essential purpose, and while not technically proper, was valid.

III.

Relying on Chapter F and Chapter 2 §§1-2, Defendant Iowa Mutual argues that the proper jurisdictional allegations were not made, and even if they were, there are no written Tribal laws (legislative laws) to apply to the claims against them, thus the Court should defer to the jurisdiction of the State Courts. The Court agrees with Iowa Mutual's contentions regarding the jurisdictional allegations, but disagrees with the notion that there is no law to apply. Leave will be given to amend the jurisdictional allegations with respect to the location of the accident, the status of the parties (member or non-members) and the contacts the Defendants had with the Reservation.

Legislation is often the product of judicial decisions in a given area which the legislature decides that the area in question needs legislative action. In Montana, this occurred when the State legislature chose to adopt a body of law regulating the practices of insurance companies.

Simply because the Tribal Council has not yet acted does not mean that there can be no law to apply in Tribal Court. An agreement to buy insurance is, after all, a contract. This Court, like other Courts, feels some freedom to determine and apply common law principles which would resolve or guide the resolution of the issues raised by the Plaintiff's complaint. Moreover, the reliance of Iowa Mutual on statement in the Code about concurrent state jurisdiction is misplaced since the Tribal Council repealed and deleted any reference to state law or concurrent state

court jurisdiction by order of Ordinance #44, which was adopted December 13, 1974 and is referenced in the Preface to the Code.

/s/ Judge Donald Dupuis
Presiding by Special Appointment
Blackfeet Tribal Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

IOWA MUTUAL INSURANCE COMPANY,
a corporation,
Plaintiff,
vs.
EDWARD M. LaPLANTE and VERLA LaPLANTE,
ROBERT WELLMAN, JR., RAMONA WELLMAN,
CRAIG WELLMAN, TERRY WELLMAN, and
WELLMAN RANCH COMPANY, a dissolved
Montana corporation,
Defendants.

CAUSE NO. cv-84-131-GF

ANSWER

Robert Wellman, Jr., Ramona Wellman, Craig Wellman, Terry Wellman and Wellman Ranch Company, a dissolved Montana corporation, hereby appear and answer the Complaint of the Plaintiff as follows:

FIRST DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

These Defendants, admit, deny and allege as follows:

1. Deny the allegations of paragraphs I, II, III and IV as they are without knowledge or information sufficient to form a belief as to the truth thereof.

2. Admit the allegations of paragraphs V and VI.

3. Deny the allegation of paragraph VII.

4. Admit the allegation of paragraph VIII.

5. Deny the allegation of paragraph IX.

WHEREFORE, these Defendants having fully answered pray judgment be entered against the Plaintiff and in favor of these Defendants.

DATED This 16th day of August, 1984.

FRISBEE, MOORE & STUFFT
/s/John P. Moore
Attorneys for Defendants
P.O. Box 997
Cut Bank, MT 59427-0997

(Certificate of Mailing deleted in printing.)

MEMORANDUM AND ORDER, United States District Court for the District of Montana, dated 9/20/84.

This document is printed at page 1a of the Appendix to the Petition for a Writ of Certiorari. It is not reprinted here.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

IOWA MUTUAL INSURANCE COMPANY,
a corporation,
Plaintiff,
vs.
EDWARD M. LaPLANTE and VERLA LaPLANTE, ROBERT WELLMAN, JR., RAMONA WELLMAN, CRAIG WELLMAN, TERRY WELLMAN, and WELLMAN RANCH COMPANY, a dissolved Montana corporation,
Defendants.

CAUSE NO. CV-84-131-GF

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN, that IOWA MUTUAL INSURANCE COMPANY, the plaintiff above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final Judgment entered in this action on the 21st day of September, 1984.

CURE, BORER & DAVIS
/s/ Maxon R. Davis
Attorneys for Plaintiff
320 First National Bank Bldg.
Great Falls, Montana 59401

MEMORANDUM OPINION, United States Court of Appeals for the Ninth Circuit, dated 9/24/85.

This document is printed on page 3a of the Appendix to the Petition for a Writ of Certiorari. It is not reprinted here.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

IOWA MUTUAL INSURANCE COMPANY,
a corporation,
Plaintiff-Appellant,
vs.
EDWARD M. LaPLANTE and VERLA LaPLANTE, ROBERT WELLMAN, JR., RAMONA WELLMAN, CRAIG WELLMAN, TERRY WELLMAN, and WELLMAN RANCH COMPANY, a dissolved Montana corporation,
Defendants-Appellees.

CA No. 84-4263
DC No. CV84-131 PGH

PETITION FOR REHEARING AND SUGGESTION FOR APPROPRIATENESS OF REHEARING EN BANC

INTRODUCTION

IOWA MUTUAL INSURANCE COMPANY, the Plaintiff-Appellant above named, hereby petitions the Court of Appeals pursuant to Rule 40 of the Federal Rules of Appellate Procedure for a rehearing of the above-entitled proceeding and hereby suggests to the Court pursuant to Rule 35(b) of the Federal Rules of Appellate Procedure that the rehearing be en banc.

The reason for a rehearing in this case is that, in the undersigned counsel's opinion, the Court of Appeals has overlooked, or at least misapprehended, a material fact, in reaching a conclusion which it did in this case. As will be discussed below, the Court of Appeals has suggested a procedural remedy with which it would, as a practical matter, be impossible to comply.

It would be appropriate to rehear this matter en banc for the reason that the decision of this Court is in direct and clear conflict with a decision from the Eighth Circuit Court of Appeals, Poitra vs. Desmarrias, 502 F. 2d 23 (1974), cert. den'd., 421 U.S. 934 (1975).

ARGUMENT

IOWA MUTUAL INSURANCE COMPANY initiated this action on May 22, 1984, seeking a declaratory judgment pursuant to 28 U.S.C., Sec. 2201 as to the extent of coverage under several insurance policies issued by it. There is no dispute but that Iowa Mutual Insurance Company is an Iowa corporation and that all of the defendants are citizens of Montana. On that basis, diversity jurisdiction would appear to exist under 28 U.S.C., Sec. 1332 (a).

It also appears that all of the individual defendants are Indians and that they reside within the exterior confines of the Blackfeet Indian Reservation.

Feeling itself bound by an earlier decision from this Court of Appeals, R.J. Williams Co. vs. Fort Belknap Housing Authority, 719 F.2d 979, (1983), the District Court dismissed Iowa Mutual's declaratory judgment proceeding, on the basis that Federal diversity jurisdiction could not be found to exist in a lawsuit against Reservation Indians in Montana, since Montana State Courts would appear not to have jurisdiction over the persons of the defendants. In its appeal, Iowa Mutual Insurance Company attacked the R.J. Williams decision and argued that the Court of Appeals should overturn its own precedent, to bring the law of this Circuit in conformity with the law of the Eighth Circuit as expressed in Poitra vs. Desmarrias, 502 F2d 23 (1974), cert. den'd., 421 U S. 934 (1975). At oral argument on June 26, 1985, the three-judge panel which heard Iowa Mutual's appeal noted that they were not empowered to consider Iowa Mutual's attack on the R.J. Williams decision and that the matter could only be considered by this Court of Appeals by

means of a Petition for Rehearing en Banc. We have now followed that panel's suggestion. As this Court of Appeals' own local Rule 12 makes plain, the existence of a conflict between the Ninth Circuit and the Eighth Circuit on the issue of diversity jurisdiction over Indian defendants makes this case an appropriate one for Rehearing en Banc.

Clearly the question of the extent of diversity jurisdiction over Indian defendants is a matter of national application. Indian reservations are located in many states both within and without the Ninth Circuit. There is no logical reason for the diversity jurisdiction of Federal Courts to be different, depending upon the geographic location of those courts. In its enactment of 28 U.S.C., Sec. 1332, Congress has not provided for anything less than uniform rules. The need for a uniform rule on this point is all the more apparent when one considers the great number of tribal jurisdiction disputes which have reached not only this Court but the United States Supreme Court within the past few years. See, for example, National Farmers Union Insurance Companies vs. Crow Tribe of Indians, ——— U.S. ———, 105 S. Ct. 2447 (1985).

Iowa Mutual Insurance Company contends that the position reached by the Eighth Circuit in the Poitra case represents the better reasoned approach. Congress has not acted to limit its statutory grant of diversity jurisdiction in cases involving Reservation Indians. Any limitation on the ability of State Courts to hear civil cases involving Indian defendants was caused not by the states themselves but rather by the Federal judiciary. On that basis, the rationale employed by the Supreme Court in Woods vs. Interstate Realty Co., 337 U.S. 535 (1949) is simply inappropriate.

In considering this Petition for Rehearing, we strongly urge this Court of Appeals to ponder on the practical ramifications of the September 24, 1985 Memorandum decision reached by the three-judge panel which heard this case. That panel feels that the Tribal Court should first deter-

mine its own jurisdiction before a Federal Court can determine the extent of its own diversity jurisdiction. Iowa Mutual Insurance Company has been told to file its declaratory judgment action in Blackfeet Tribal Court, so that the Tribal Court can first determine whether it has jurisdiction over the matter. (As has previously been noted, the Blackfeet Tribal Code contains no provision for declaratory judgment actions). Iowa Mutual Insurance Company filed this proceeding in Federal District Court because — quite frankly — Iowa Mutual Insurance Company has a strong preference for having this matter adjudicated by a Federal Tribunal. Iowa Mutual Insurance Company has no desire to file a declaratory judgment action against local Indian defendants in Blackfeet Tribal Court, whereby that Court can determine the nature and extent of its obligations under various insurance policies issued to those defendants. Yet, the Court of Appeals now expects Iowa Mutual Insurance Company to file its declaratory judgment proceeding in Tribal Court, so as to let the Tribal Court pass upon it. (At least for jurisdictional purposes). In suggesting that Iowa Mutual Insurance Company proceed on this basis, the three-judge panel did take note of the related proceedings that have developed between Iowa Mutual Insurance Company, the LaPlantes and Wellmans. Any familiarity with those proceedings makes plain the fact that the LaPlantes and Wellmans have no objection to the Tribal Court's jurisdiction over them.

Now, Iowa Mutual Insurance Company is being told to files its declaratory judgment against the Wellmans and LaPlantes in Tribal Court so the Tribal Court can determine its own jurisdiction. Quite obviously, the Wellmans and LaPlantes are not going to challenge the Tribal Court's jurisdiction. By filing its own declaratory judgment in Tribal Court, Iowa Mutual Insurance Company will have in effect voluntarily consented to the Tribal Court's jurisdiction over it. How can a plaintiff challenge the jurisdiction of a

court in which it voluntarily files an action? We do not know.

Thus, the September 24, 1985 Memorandum decision from this Court has established a fundamentally impossible and impractical solution to the jurisdictional dispute to which Iowa Mutual Insurance Company's declaratory judgment has given rise.

The September 24, 1985 Memorandum decision is further flawed by the panel's attempt to reconcile its reasoning with the National Farmers decision. The problem is that National Farmers was a federal question case and the principles announced therein are not directly applicable to diversity issues. Diversity cases should be resolved with resort to diversity principles. Those principles are correctly expressed by the Eighth Circuit Court of Appeals in its Poitra decision. By express provision of the Constitution and Laws of the United States, the Indian defendants here are considered citizens of the State of Montana. Plaintiff is a citizen of Iowa. Congress has granted diversity jurisdiction over disputes arising between these citizens. It would be improper for any federal court to limit or abrogate Congress' grant of that jurisdiction, or to make that grant dependent upon a consideration given to a dispute by an Indian Tribal Court. Worse, the suggestion that Iowa Mutual Insurance Company submit this dispute to a tribal court is wholly impractical. The procedure suggested will unavoidably dictate the result to be obtained. Lacking any means to challenge a tribal court's jurisdiction, Iowa Mutual Insurance Company will have been forced to involuntarily submit to it.

CONCLUSION

The September 24, 1985 Memorandum decision from this Court was clearly wrong. Further it compels an impractical result. This Court should rehear and reconsider en banc its decision. Further reflection hopefully will com-

pel a reversal of the position first announced in the R.J. Williams case, so as to bring this Court in line with the Eighth Circuit Court of Appeals, whose decision in Poitra is both legally and practically sound.

DATED this 7th day of October, 1985.

CURE, BORER & DAVIS
/s/ Maxon R. Davis
Attorneys for Iowa Mutual Insurance
Company, Plaintiff-Appellant
P.O. Box 2103
Great Falls, Montana 59403

(Certificate of Mailing deleted in printing.)

ORDER of the United States Court of Appeals for the Ninth Circuit Denying Petition for Rehearing and Suggestion for Rehearing en Banc, dated 12/27/85.

This document is printed at page 6a of the Appendix to the Petition for a Writ of Certiorari. It is not reprinted here.